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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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July 23, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

ORIGINAL

Re: Ex Parte Presentations in (1) CC Docket Nos. 98-11/, 98-26, 98-32, 98-78 and 98-91 Regarding Section 706; and (2) CC Docket No. 96-98 & CCB/CPD 97-30 Regarding Reciprocal Compensation

Dear Ms. Salas:

On behalf of the Competitive Telecommunications Association ("CompTel"), I am writing to notify you of a meeting yesterday between Genevieve Morelli, Joseph Gillan and I, on behalf of CompTel, and Kathryn Brown, Larry Strickling, Ed Krachmer and Katherine Schroder of the Common Carrier Bureau. In that meeting, CompTel discussed the attached materials in connection with the numerous petitions filed to implement Section 706 of the Telecommunications Act of 1996.

Further, CompTel recommended that the Commission take no action on the issue whether Internet access traffic is subject to reciprocal compensation obligations under Section 251(b)(5) of the Telecommunications Act of 1996. In particular, CompTel noted that any problems regarding reciprocal compensation can be and are being resolved through negotiations for new interconnection agreements between incumbent local exchange carriers and competitive local exchange carriers.

Respectfully submitted,

  
Robert J. Aamoth

cc: Kathryn Brown (w/encl.)  
Larry Strickling (w/encl.)  
Ed Krachmer (w/encl.)  
Katherine Schroder (w/encl.)

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**CompTel Recommends a Comprehensive Investigation  
into ILEC Corporate Structure**

- I. There are multiple proceedings addressing ILEC corporate structure currently pending before the Commission.**
  - A. CompTel's Petition to declare the CLEC-affiliate of an ILEC an incumbent LEC within the ILEC's Serving Territory under Section 251(h).
  - B. RBOC requests under Section 706 to exempt data services/investments from a variety of regulatory obligations, including Section 251(c).
  - C. LCI has recommended the structural separation of a RBOC into distinct network and retail subsidiaries to promote local competition and establish presumptive compliance with Section 271.
  
- II. The CompTel 251(h) Petition addresses the use of a subsidiary corporate structure by an ILEC to avoid its obligations under the Act and foreclose local competition.**
  - A. Several ILECs (most notably BellSouth) are establishing CLEC affiliates to offer local service in "competition" with themselves, in the same geographic areas and using brand names deliberately intended to evoke (in the public's mind) the ILEC's reputation.
  - B. Because the ILEC and its affiliated CLEC report consolidated results to the same stockholders, the CLEC affiliate faces no independent obligation to innovate or operate profitably. By the affiliate reselling the ILEC's services under Section 251(c)(4), the ILEC can give the appearance of nondiscrimination without the risk of competitive harm:
    1. Because the CLEC-affiliate *wants* to be seen as the incumbent, the concern that service-resale limits the entrant to offering the same service as the incumbent is irrelevant.
    2. The CLEC-affiliate benefits from the incumbent's advertising and inherited reputation -- factors which other entrants must offset through expenditures which erode the financial viability of the wholesale discount.

3. The ILEC/CLEC together have a financial relationship that no independent CLEC can duplicate -- the ILEC retains an access-monopoly to its affiliated CLEC's customers and they share a single stockholder which judges only their combined performance.

**III. LCI has identified the minimally acceptable conditions necessary for a separate subsidiary arrangement to promote competition.**

- A. There must be a clear and comprehensive separation between the ILEC's wholesale (i.e., network) and retail subsidiaries.
- B. The ILEC's retail subsidiary must obtain its network facilities from the ILEC at cost-based rates, ordered and provisioned using the same operational systems as any other CLEC.
- C. The ILEC's CLEC-affiliate must have a significant fiduciary obligation to independent stockholders to assure that it operates with the same economic incentives as other CLECs.

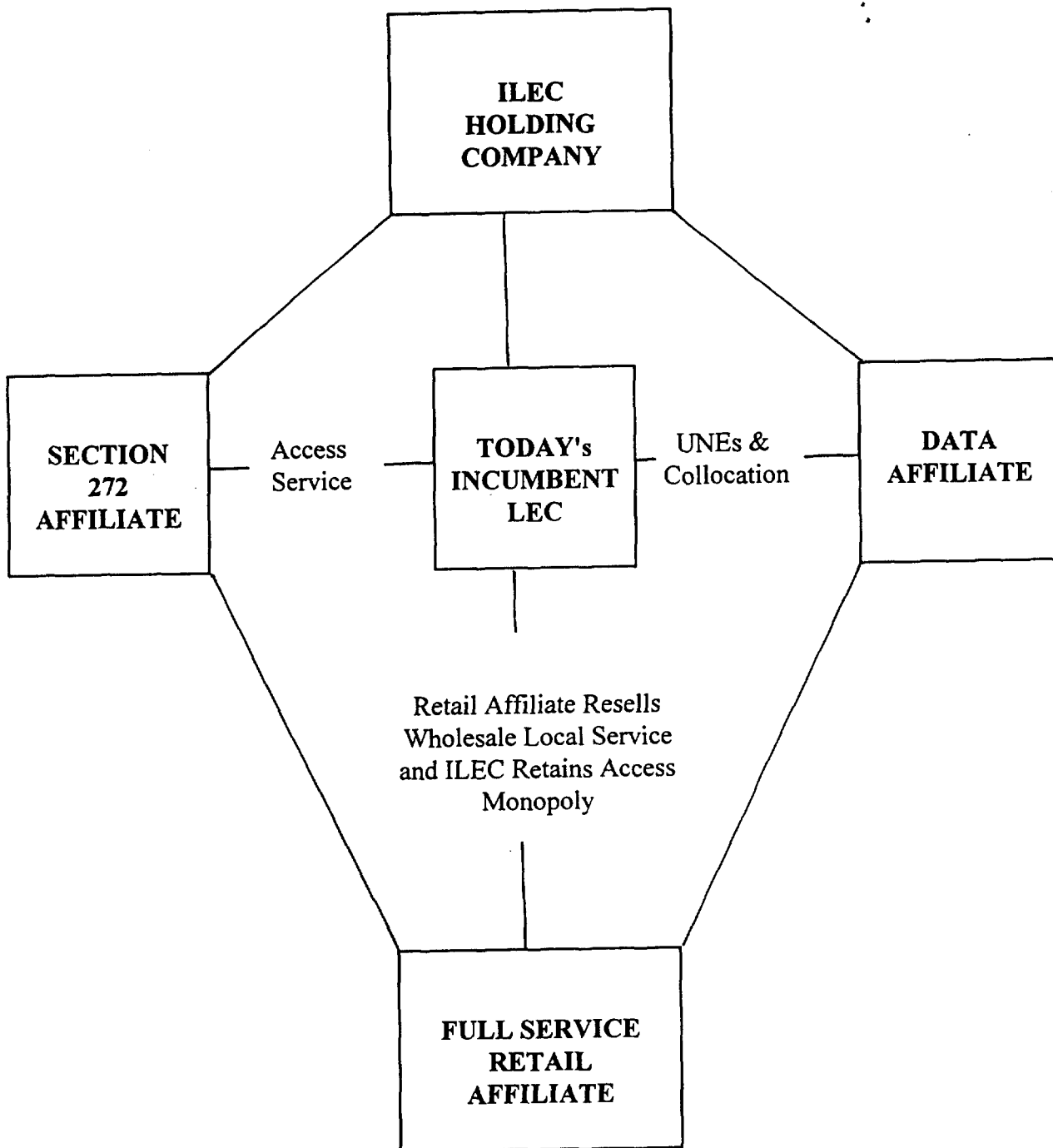
If -- and *only* if -- the basic conditions identified in the LCI Petition are in place, then the ILEC's CLEC-affiliate can be subject to the same regulation as its CLEC competitors.

**IV. An ILEC affiliate limited to data services will not be sufficient to promote competition for data services specifically, much less promote competition more generally.**

- A. Without independent ownership, the data affiliate will not have the same economic relationship to the ILEC as other CLECs. Any non-cost component in network element prices (or collocation charges) will favor the ILEC-affiliate over other potential providers.
- B. *Even if* competitors are given the same access to ILEC facilities as the data-affiliate, however, the data-affiliate will enjoy a significant uneconomic advantage.
  1. The ILECs recognize that bundled service-packages are likely to dominate the competitive landscape in the future.
  2. Competition depends upon all competitors having an ability to compile similar packages of services.

3. Undistorted competition requires that CLECs have cost-based, nondiscriminatory access to the ILEC's *entire* network, not just those elements needed to provide data services.
- C. The underlying trend of facilities jointly supporting advanced data and conventional phone services calls for a comprehensive solution.
- V. **The Commission should *comprehensively* address the ILEC corporate structure in a way that will best encourage advanced services, open local markets to competition, and can lead to the deregulation of ILEC retail services. CompTel recommends that the Commission consolidate these proceedings addressing ILEC-affiliates and conduct a single rulemaking intended to promote full retail competition.**

# **A DATA-ONLY SEPARATE AFFILIATE WILL NOT PROMOTE FAIR COMPETITION**



## A COMPREHENSIVE SUBSIDIARY POLICY CAN PROMOTE COMPETITION

